

PROVIDING FOR THE FORFEITURE OF THE RIGHT-OF-WAY LOCATED WITHIN THE STATE OF CALIFORNIA HERETOFORE GRANTED TO THE ATLANTIC & PACIFIC RAILROAD CO. BY THE UNITED STATES

APRIL 30, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mrs. FROST, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 7790]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 7790) to provide for the forfeiture of the right-of-way located within the State of California heretofore granted to the Atlantic & Pacific Railroad Co. by the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 5, following the word "Company" insert "and its successors in interest".

Page 2, line 5, change the period to a colon and add the following proviso:

Provided, however, That nothing in this Act shall apply to, and there is hereby excluded from the forfeiture hereby declared, any portion or portions of said right-of-way within any part of which any railway or telegraph line has been heretofore constructed and is existing on the effective date of this Act, together with all grounds heretofore selected as necessary for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables and stations upon which any such buildings, structures, or facilities have been heretofore constructed, and are existing on the effective date of this Act.

PURPOSE OF THE BILL

H. R. 7790, if enacted as amended by the committee, would declare the forfeiture to the United States of all the right-of-way located within the State of California, and attendant rights, granted to the Atlantic & Pacific Railroad Co. by section 2 of the act of July 27, 1866 (14

Stat. 294), except those portions within which a railway or telegraph line is located and those grounds upon which railroad buildings, structures, or facilities exist on the effective date of the act.

The right-of-way granted to the Atlantic & Pacific Railroad Co. extends from the Colorado River near Topock, Ariz., to San Francisco—a route distance of approximately 700 miles. No railroad was ever built within that portion of the right-of-way extending from Bryman, Calif., to San Francisco, a distance of about 500 miles. Eastward, between Bryman and the Colorado River, parts of the rights-of-way, apparently totaling less than one-half of the 200-mile distance, are occupied by a railroad line of the Atchison, Topeka & Santa Fe Railway system, successor in interest to the Atlantic & Pacific Railroad Co. The portions so occupied would not be affected by this legislation.

Where the forfeited right-of-way crosses former public lands which are now in non-Federal ownership, the enactment of H. R. 7790, as amended by the committee, will result in the automatic transfer under the act of March 8, 1922 (42 Stat. 414, 43 U. S. C. 912), of the right, title, and interest of the United States to the landowners, subject to a reservation of minerals in favor of the United States. In addition to removing the cloud on the titles to such lands, most of which were patented under the homestead laws, H. R. 7790, introduced by Representative Hiestand, would remove an encumbrance upon the public lands traversed by the right-of-way and would facilitate the management, utilization, and disposal of such public lands.

More detailed information concerning the necessity and desirability of H. R. 7790 in order to clear titles to lands traversed by the unused portion of the Atlantic & Pacific Railroad Co. right-of-way in California is set forth in the favorable report of the Department of the Interior.

The Atchison, Topeka & Santa Fe Railway system has no objection to H. R. 7790 as amended by the committee.

No appropriation of Federal funds is authorized by this legislation.

COMMITTEE AMENDMENTS

The first amendment is perfecting in nature and was recommended by the Department of the Interior.

The second amendment is a proviso which protects the existing rights of the railroad to those portions of the right-of-way which are in use. This amendment was suggested by the Atchison, Topeka & Santa Fe Railway system, successor in interest to the Atlantic & Pacific Railroad Co.

AGENCY REPORT

The Department of the Interior recommends the enactment of H. R. 7790. The Department's report, wherein it is reported that the Bureau of the Budget has no objection, is set forth following.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., September 11, 1957.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 7790, a bill to provide for the forfeiture of the right-of-way located within the State of California heretofore granted to the Atlantic & Pacific Railroad Co. by the United States.

We recommend that H. R. 7790 be enacted, if amended as suggested below.

Section 2 of the act of July 27, 1866 (14 Stat. 292, 294), granted the Atlantic & Pacific Railroad Co. a right-of-way through the public lands for the construction of a railroad and a telegraph line from Missouri to the Pacific, with the right to remove materials from the lands adjacent to the line of the railroad for its construction. Other public lands were granted to the company by the same statute. Section 20 of that act (14 Stat. 299) specifically reserved the right of the United States to add to, alter, amend, or repeal that act, having "* * * regard for the rights of said Atlantic & Pacific Railroad Co. * * *." The act of July 6, 1886 (ch. 637, 24 Stat. 123), declared that all the lands granted to the company by the 1866 act which were adjacent to and coterminous with the uncompleted portion of the main line of the railroad were forfeited and restored to the public domain. That act specifically excepted from the forfeiture "the right-of-way and the right, power, and authority given to said corporation to take from the public lands adjacent to the line of said road material * * * for the construction thereof * * *." H. R. 7790 would now declare the forfeiture of the right-of-way and the right to remove material insofar as lands within the State of California are concerned.

During the last century a number of statutes similar to the 1866 act cited above were enacted making liberal grants of rights-of-way across public lands to encourage the construction of railroads. The legal characteristics of these grants have been determined in a number of cases. A railroad may not alienate or abandon any part of a right-of-way granted, and no one can acquire the right-of-way through adverse possession. *Northern Pacific Railway v. Townsend* (190 U. S. 267 (1903)). Even where the right-of-way crosses a section granted in fee to the railroad, it has been held that there is no merger of the railroad's rights under the two grants. *Holland v. Northern Pacific Railway Company* (214 Fed. 920 (9th Cir. 1914)). The right-of-way takes effect at the time of the enactment of a statute, even though the definite location of the line of the railroad may not be made until later. *Railroad Company v. Baldwin* (103 U. S. 426 (1880)). The issuance of a patent to lands crossed by a railroad right-of-way grant does not convey any interest in the lands included within the right-of-way. *E. A. Crandall* (43 L. D. 556 (1915)). Oil and gas deposits in the right-of-way are subject to leasing by the United States under the act of May 21, 1930 (30 U. S. C., secs. 301-306), *United States v. Union Pacific Railroad Company* (353 U. S. 112 (1957)).

The act of March 8, 1922 (42 Stat. 414; 43 U. S. C., sec. 912), provides that, whenever public lands have been or may be granted to a railroad company for use as a right-of-way or as sites for railroad structures, and the use and occupancy of those lands for such purposes has ceased or shall cease, whether by forfeiture or abandonment decreed or declared by a court of competent jurisdiction or by act of Congress, all the right, title, and interest of the United States in the lands included in that right-of-way shall pass to the party, or its successor in interest, to which title of the United States to the whole of the legal subdivision or subdivisions traversed or occupied by the railroad or railroad structures has been granted. An exception is made of lands within a municipality; in such a case the right, title, and interest of the United States pass to the municipality. The first proviso in the 1922 act excepts from such a transfer of title any conveyance made by a railroad company of a portion of its right-of-way if, before the declaration or decree of forfeiture or abandonment, the conveyance is validated or confirmed by an act of Congress.

Maps of the definite location of railroads lying in California were filed with the Secretary of the Interior on March 12, 1872, and April 16, 1874, but we understand that the line itself was never built. However, since the grant of the right-of-way took effect on July 27, 1866, and took complete precedence over any claim to the public lands involved which was issued after that date, the right-of-way and the other mentioned rights are still intact. We have been informed that they are now held by the Atchison, Topeka & Santa Fe Railway Co. which is a successor in interest of the Atlantic & Pacific Railroad Co.

It is accordingly obvious that the continuance of this right-of-way complicates the utilization and disposal of the lands traversed. The railroad cannot alienate the property and neither can the United States. We think therefore that, in the absence of special consideration, it would be in the public interest to cancel the right-of-way in California in order to permit its elimination from the public lands it crosses and to permit the transfer under the act of March 8, 1922, of the right, title, and interest of the United States where it crosses former public lands now in non-Federal ownership.

We recommend that the words "and its successors in interest" be inserted after the word "company" at page 1, line 5. We assume that the Congress will give ample consideration to any views expressed by the grantees' successors in interest under this bill. In the absence of evidence that their rights dictate otherwise, we recommend that H. R. 7790 be enacted.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ROGER ERNST,
Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 14, 1958.

Hon. CLAIR ENGLE,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

DEAR MR. ENGLE: We have received a letter from Congressman Edgar W. Hiestand, dated February 4, 1958, concerning H. R. 7790, a bill to provide for the forfeiture of the right-of-way located within the State of California heretofore granted to the Atlantic & Pacific Railroad Co. by the United States. H. R. 7790 would declare the forfeiture of all the right-of-way located within the State of California, and attendant rights, granted to the Atlantic & Pacific Railroad Co. by section 2 of the act of July 27, 1866 (14 Stat. 294). The Atchison, Topeka, & Santa Fe Railroad is, we understand, the successor in interest of the Atlantic & Pacific Railroad.

In his letter Mr. Hiestand requested our views on two proposed amendments to that bill. The amendments would be as follows:

On page 1, line 3, immediately after "California", insert: "and westerly of the west line of range 4 west, San Bernardino base and meridian,".

On page 1, line 6, immediately after "within" insert: "said portion of".

The effect of these amendments would be to permit the Santa Fe Railroad to retain that part of the right-of-way which is in eastern California. We have also received a letter, dated February 12, 1958, from Mr. L. W. Butterfield, of the Santa Fe Railroad, explaining in some detail the reasons why the railroad requested the proposed amendments.

We recommended in our letter of September 11, 1957, that H. R. 7790 be enacted, subject to a small amendment. Although we are thus on record as favoring a forfeiture of the entire right-of-way, we would not object to a partial forfeiture. We feel that it is essential that the welfare and efficiency of the railroad not be jeopardized. We have learned from Mr. Butterfield's letter that part of the Santa Fe's present line east of Bryman, Calif., traverses the right-of-way granted to the Atlantic & Pacific by the 1866 act, and that other parts of that right-of-way may be needed in the relocation of the line for grade and curve elimination. The railroad concedes that in the eastern area substantial portions of the right-of-way are not in use at this time, but points out that most of these unused portions are in sparsely inhabited areas.

We believe that the public interest would be served best if the railroad had its right-of-way adjusted to meet most efficiently its present foreseeable needs. However, under the circumstances, being unwilling to handicap the railroad in its operations, we would interpose no objection to the proposed amendments if they were introduced by Mr. Hiestand.

The Bureau of the Budget has advised that there is no objection to the submission of this supplemental report to your committee.

Sincerely yours,

ROGER ERNST,
Assistant Secretary of the Interior.

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